Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
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Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates	))))	MM Docket No. 95-92

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COMMENTS OF POST-NEWSWEEK STATIONS, INC.

Post-Newsweek Stations, Inc. ("PNS") urges the Commission to reject the proposals to amend the network-affiliate rules contained in the Notice of Proposed Rulemaking in the above-captioned proceeding. We fully support the comments of the Network Affiliated Stations Alliance that are being filed today.

As a television station group owner with stations affiliated with each of the three major networks, PNS is very concerned about the amendment of the network-affiliate rules proposed in this docket and the impact that elimination of these rules would have on the network-affiliate relationship. PNS owns and operates six VHF network affiliated television stations (WDIV in Detroit, Michigan; WFSB in Hartford, Connecticut; WJXT in Jacksonville, Florida; WPLG in Miami, Florida; KPRC-TV in Houston, Texas; and KSAT-TV in San Antonio, Texas). We are committed to offering high quality programming of interest to the communities we serve. Our programming consists of daily news, entertainment programs, children's educational programs, and information relevant to our local communities. PNS takes very seriously our obligation to serve the public interest by broadcasting responsibly to provide our audience with diverse programming that addresses the needs and interests of our communities.

PNS offers these comments in recognition of our duty to maintain control over our programming for the benefit of our audiences. We believe that the proposed rule modifications in the Notice, if adopted, would undermine our ability to adequately and effectively manage our stations so that our audiences receive the responsiveness in programming that they deserve.

We adamantly disagree with the assumption in the Notice that the balance of power has shifted away from networks in their relationships with affiliates.[1] Instead, networks have grown larger and larger.[2] Affiliates have come under attack, as of late, in an effort to deprive us of the primary tools by which we maintain conscientious control over our programming for the benefit of our audiences.

If the proposed modifications were to be adopted, we would increasingly find ourselves in the untenable position of defending our programming choices. By hindering the growth of new networks, the proposal would further limit programming choices. Consequently, PNS opposes the proposal with regard to its limitation on the right to reject rule and elimination of the option time and exclusive affiliation prohibitions. PNS urges the Commission to maintain, in their entirety, the three core rules -- right to reject,

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[1] PNS notes that the Commission recently has shifted the balance of power in this relationship to the networks by eliminating, among other rules, the financial interest and syndication rules and the prime-time access rule. PNS supported these regulatory changes because we believed that the Commission would retain other safeguards, including the network-affiliate rules that are being reviewed here.

[2] After the consummation of the transactions that Capital Cities/ABC has with the Disney Company and that CBS, Inc. has with Westinghouse, the gulf between the networks and affiliates in terms of bargaining strength and size will be widened even further.

option time prohibition, and exclusive affiliation prohibition -- which are essential to the fulfillment of our duty to serve the public interest.

I. **Right to Reject Rule**

As licensees, we have a nondelegable duty to carefully select the programs that we broadcast. The right to reject rule is the primary method available to affiliates to assist us in meeting this responsibility. Under the proposal presented in the Notice, affiliates would be restricted from rejecting network programming for financial reasons. This proposal discourages affiliate control over programming and is likely to wreak administrative havoc on the Commission.

Affiliates already have a great responsibility to determine if network programming is suitable for their local audiences. The public interest standard demands that local affiliates retain control over the selection of programming for their local audiences. Networks, under the Notice proposal, would likely challenge any rejection of their programs by affiliates, arguing that the preemption was solely the result of financial considerations. Affiliates would have a new duty to justify their nonselection of network programming. Great pressure would come to bear on affiliates to broadcast network programs as a matter of course in order to avoid the administrative burden of defending each rejection decision. That means less time available for affiliates to discharge their central responsibility to their communities -- to evaluate programming to determine if it appropriately serves the needs of those local communities.

Taking a broader view of the affiliate's responsibility to serve the public interest, some affiliates may occasionally reject a network program for financial reasons, without compromising on quality, to enable them to choose other programming that is demanded by the audience and/or which would be rewarding to the public. Thus, affiliates that have a long-term perception of their duty to serve the public interest can satisfy that duty by periodically making financially-based decisions when the programming that is carried is more highly demanded by the community.

Even more significantly, forcing affiliates to justify to the federal government that their motives were "non-financial" in rejecting network programming threatens to inject the Commission into the essence of the programming process. Such a proposal would raise profoundly disturbing constitutional questions.

II. Time Option Rule

The option time prohibition protects affiliates from being vulnerable to the networks' exercise of their options on station time, with little or no notice, a practice that has traditionally disrupted affiliate programming schedules. The Notice's proposal to eliminate the ban on option time provisions would frustrate our ability to develop local programming that is responsive to the needs of our audiences. Local businesses would be reluctant to advertise with us in fear that the local program that they were hoping to sponsor will be preempted by a network program. As affiliates, we would be restricted in our scheduling ability, thereby nullifying our efforts to build a dependable audience for our local programs. Local programming is a vital part of community life. Option time provisions restrict affiliate freedom to address local advertising and programming needs.

Additionally, option time provisions hinder our ability to accept programming from new networks or programming that our own group develops.[3] The option time that our networks would be able to reserve under the proposal would make the scheduling of other programming unpredictable and impractical. New networks cannot operate and gain a foothold in a competitive market with such uncertainty.

Merely lengthening the time by which networks must inform affiliates of their intention to use their option time does not solve the problem. An enormous amount of advance notice would be needed to permit affiliates to obtain replacement programming in the marketplace. It takes a substantial period of time to properly examine material in order to make the determination that a particular program would serve the public interest and to receive substitute programming. Networks, themselves operating on a short programming schedule, are likely to be able to give inadequate information from which affiliates are expected to make the determination of whether to broadcast a given program.[4]

In practice, we already grant significant time to our affiliated networks to broadcast network programs. Resurrection of option time clauses in our network

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[3] PNS has, in the past, test-marketed new programs it has developed on its own stations. If networks are permitted to demand "option time" periods over which affiliates would have very little, if any, control, our ability to utilize this process to develop new and diverse programming would suffer.

[4] If the option time prohibition is lifted, the Commission would not only have to regulate the amount of time by which networks must give affiliates notice, but also the detailed content of the notice. For the notice to be effective, the Commission would need to establish a procedure to deal with post-notice changes that a network may make regarding programming.

affiliation agreements will require us to clear even more time in our programming schedules for network programming that we might otherwise have preempted in favor of non-network-affiliated programming or independent programming. Who suffers as a result? Our audiences do. They are the ones who will face decreasing diversity in programming as affiliates are effectively compelled to adopt an almost straight-network programming format.

III. Exclusive Affiliation Rule

The ban on exclusive affiliation provisions enables affiliates to broadcast programs from new networks and independent producers, allowing us to offer more choice to our viewers. Many programs that we now offer to our viewers will be foreclosed to them under the Notice proposal. As discussed below, both stations and the public would suffer as a result of exclusive affiliation provisions.

Without the exclusive affiliation rule, stations would be precluded from bringing new network programming to their viewing audiences. New networks would find it much more difficult to locate outlets for their programs. If new networks do not survive or flourish, existing networks will face little competition -- thereby solidifying or increasing the power of established networks over affiliate stations.

Once again, this proposal will make our job of choosing programming that we consider to be in the public interest much harder. Although PNS is able to develop original programming, it is expensive and time consuming for stations to independently develop programming for their audiences. Syndicated fare, similarly, can be expensive. We, of course, would never forsake our responsibility to offer the best possible programming available to our audiences, but some stations may broadcast network material as a matter of course under an exclusive affiliation contract. By narrowing the sources of programming from which we can choose to provide a high-quality diverse format for our audiences, the proposal would contravene the public interest.

IV. Conclusion

PNS supports the modification, revision, and even elimination of Commission rules when changes in marketplace justify such actions. However, the protections offered by the core rules regarding the right to reject, option time, and exclusive affiliation are still greatly needed today. Affiliates and new networks will both be greatly harmed by adoption of the Notice's proposal regarding these provisions.

More significantly, the big loser would be the viewing public. With the implementation of the proposal, audiences would receive less diversity in their programming and fewer local and independent programs. Affiliate stations would be placed in the untenable position of balancing network demands against the public interest. For all these reasons, we oppose the suggested proposal regarding the right to reject, option time, and exclusive affiliation rules.

Respectfully submitted,

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